

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

MARVEL MA,)
)
 Plaintiff,)
)
 v.) Case No. 11-03048-CV-S-BP
)
 MISSOURI STATE UNIVERSITY, *et al.*,)
)
 Defendants.)

AMENDED TRIAL AND PRETRIAL ORDER

Pursuant to Rules 16(b) and 26(f) of the Federal Rules of Civil Procedure, the following pretrial and trial schedule is hereby established:

1. TRIAL SETTING. This case is scheduled for a jury trial, commencing at 8:30 a.m., on August 17, 2015, at the United States Courthouse in Springfield, Missouri.
2. PRETRIAL CONFERENCE. A final pretrial conference in this case will be held at 10:00 a.m., on August 7, 2015, via teleconference. Call in information: Dial (877) 336-1839 and enter access code 4259420. The agenda for this conference will include:
 - a. Identification of facts not in dispute to which the parties will stipulate, in order to save trial time;
 - b. Identification of legal and factual issues to be tried;
 - c. Disposition of pending motions;
 - d. Discussion of any legal questions which must be resolved prior to trial;
 - e. Discussion of any suggestions by counsel to simplify and expedite the trial.
3. PRETRIAL DOCUMENTS. The documents listed below shall be filed prior to the pretrial conference.

- a. Motions in Limine. Motions in limine shall be filed at least ten (10) days prior to the pretrial conference. Responses to motions in limine shall be filed at least three (3) days prior to the pretrial conference.
- b. Stipulation of Uncontested Facts. At least three (3) days prior to the date the pretrial conference is to be held, the parties shall file a stipulation of any uncontested facts. If no stipulated facts can be agreed upon, including facts related to the Court's subject matter jurisdiction, the parties shall file a joint statement to that effect.
- c. Witness List. Pursuant to Local Rule 39.1, at least five (5) days prior to the date the pretrial conference is to be held, each party shall file and serve a list of all witnesses who may be called to testify at trial. If a witness is not listed by a party, that witness will not be permitted to testify absent leave of Court and then only for the purpose of unanticipated rebuttal or impeachment.
- d. Exhibit List. Pursuant to Local Rule 39.1, at least five (5) days prior to the date the pretrial conference is to be held, each party will file and serve a list of all exhibits which may be offered at trial. If an exhibit is not listed by a party, that exhibit will not be admitted absent leave of Court.
- e. Stipulation as to the Admissibility of Evidence. At least three (3) days before the pretrial conference, the parties shall file a stipulation as to the admissibility of evidence, when the identification and foundation of the exhibit is not to be contested.
- f. Designation of Deposition Testimony. Fifteen (15) days before pretrial conference, each party shall file and serve a designation, by page and line number, of any deposition testimony to be offered in evidence by that party.
- g. Objections to Designated Deposition Testimony and Counter Designation. At least ten (10) days prior to the pretrial conference, each party shall file and serve:
 1. Any objections to proposed deposition testimony designated by any other party; and
 2. A designation, by page and line number, of any deposition testimony to be offered as counter-designation to deposition testimony designated by other parties.
- h. Submission of Deposition Designations. Seven (7) days prior to the pretrial conference, each party shall file, serve, and deliver to all other

parties and the Court, its objections to any deposition testimony designated pursuant to subparagraphs g. 1. and 2. above.

The Court should receive deposition designations in the following manner:

1. The parties are to jointly submit one copy of each designated deposition.
2. Each party is to highlight the portion of the deposition they want to designate, including counter-designations.
3. Each party should use a different highlight color to indicate their designations (for example, plaintiff uses yellow; defendant uses blue).
4. Each party should also indicate their objections on the actual deposition by bracketing those portions in the margin of the deposition, again using a different color to indicate the portion to which each party objects.
5. Each party should submit to the Court a Word version document of the Objections to Deposition Designations that you filed in CM/ECF. Send that via email to my judicial assistant at annette_cordell@mow.uscourts.gov.

i. Jury Instructions. Three (3) days prior to the pretrial conference, the parties shall jointly file an annotated (with sources) set of proposed jury instructions. Proposed instructions shall reflect the authorities upon which the instruction is based and should be taken from or drawn in the manner of *Model Civil Jury Instructions for the District of Courts of the Eighth Circuit* and/or *Missouri Approved Instructions* (MAI) where available and appropriate. All instructions shall be designated as Instruction No. ____.

The Court prefers to receive joint instructions from the parties. Separate instructions are appropriate only when the parties cannot agree upon a specific instruction. In that instance, the parties shall jointly submit the instructions upon which they agree. Each party shall submit its proposed version of the instructions upon which the parties do not agree, along with a written objection to the other party's version.

The instructions should also be submitted to the Court electronically, in a Word document. Send the instructions via email to my judicial assistant at annette_cordell@mow.uscourts.gov.

- j. Trial Brief. At least five (5) days prior to the pretrial conference, counsel for each party shall file a trial brief stating the factual and legal contentions in the case.
- k. Voir Dire Questions. At least five (5) days prior to the pretrial conference, counsel for each party shall file a list of questions or topics for voir dire. Objections to opposing party's voir dire questions shall be filed at least three (3) days prior to the pretrial conference.

At the pretrial conference, the Court will discuss the manner in which voir dire will be conducted. In appropriate cases, the court will permit counsel for the parties to conduct questioning of the panel members. However, questions will be limited to those filed with the court, and the court will limit the amount of time each party will be permitted to conduct questioning.

4. SETTLEMENT DEADLINE. Unless otherwise ordered, the court hereby imposes a settlement deadline of 12:00 Noon on the business day before trial. If the case is settled after that date, the court may enter an order to show cause why certain costs should not be imposed on the party or parties causing the delay in settlement.

IT IS SO ORDERED.

/s/ Beth Phillips
BETH PHILLIPS, JUDGE
UNITED STATES DISTRICT COURT

DATED: March 25, 2015